

FILED

JUL 27 2006

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE FRANKLIN PELLY,

Defendant - Appellant.

No. 05-30331

D.C. No. CR-04-00010-DWM

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted July 24, 2006^{**}

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

George Franklin Pelly appeals from the 13-month term of imprisonment imposed upon revocation of his supervised release. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we affirm.

^{*} This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pelly contends that *United States v. Booker*, 543 U.S. 220 (2005), requires that sentencing classifications under 18 U.S.C. § 3559(a) be determined using the maximum term allowed by the United States Sentencing Guidelines, rather than the maximum term provided under the law describing the offense. We reject Pelly’s contention. 18 U.S.C. § 3559(b) clearly states that “the maximum term of imprisonment is the term authorized by the law describing the offense.” *See also United States v. Murillo*, 422 F.3d 1152, 1154 (9th Cir. 2005) (rejecting an analogous contention under state sentencing laws), *cert. denied*, 126 S.Ct. 1928 (2006).

AFFIRMED.